

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RICHARD L. McCLUSKEY, individually,  
on behalf of all other similarly situated  
persons, and on behalf of the RED DOT  
CORPORATION EMPLOYEE STOCK  
OWNERSHIP PLAN,

Plaintiff,

v.

TRUSTEES OF RED DOT CORPORATION  
EMPLOYEE STOCK OWNERSHIP PLAN  
AND TRUST; R. BRUCE CHANNER; RICK  
BOMAN; GARY HANSEN; CHRYSTAL  
HARVEY; JESSE SMITH;  
ADMINISTRATIVE COMMITTEE OF RED  
DOT CORPORATION EMPLOYEE STOCK  
OWNERSHIP PLAN AND TRUST; and  
RED DOT CORPORATION EMPLOYEE  
STOCK OWNERSHIP PLAN,  
Defendants.

NO. C09-0449 RSM

FINAL ORDER AND JUDGMENT:

- (1) APPROVING SETTLEMENT  
AGREEMENT;
- (2) AWARDING FEES AND COSTS;  
AND
- (3) APPROVING INCENTIVE AWARD

CLASS ACTION

The matter comes before this Court on the *“Joint Motion to for Final Approval of Class Action Settlement Agreement”* (“Joint Motion”) and *“Plaintiff’s Application for Attorney Fees and Costs, and Approval of Incentive Award”* (“Application”).

The Court has considered the Joint Motion and the Application, and the declarations in

ORDER (1) APPROVING SETTLEMENT AGREEMENT;  
(2) AWARDING FEES AND COSTS; AND (3) APPROVING  
INCENTIVE AWARD – 1

[Case No. C09-0449 RSM]

SIRIANNI YOUTZ  
MEIER & SPOONEMORE  
719 SECOND AVENUE, SUITE 1100  
SEATTLE, WASHINGTON 98104  
TEL. (206) 223-0303 FAX (206) 223-0246

1 support. In addition, the Court has considered the files and records in this matter,  
2 including the Settlement Agreement attached hereto as *Exhibit 1*.

3 Based upon the record before it, the Court finds, pursuant to FRCP 23(e),  
4 that the proposed Settlement Agreement is fair, reasonable and adequate. No class  
5 member has objected to the Settlement Agreement, and 23 of 27 class members have  
6 elected to take an immediate lump sum distribution. There is no evidence of fraud,  
7 collusion or overreaching by the parties or that the rights of absent class members were  
8 disregarded. The Settlement Agreement provides real, immediate and substantial  
9 benefits to class members.

10 The Court also finds that Class counsel should be entitled to an award of  
11 attorney fees and costs for their efforts in this litigation, and that the incentive award to  
12 Plaintiff McCluskey, as set forth in the Settlement Agreement, should be approved.

13 Accordingly, the Court enters the following finding and conclusions:  
14

#### 15 I. FINDINGS

16 1. The parties reached a settlement, the terms of which are set out in  
17 the proposed Settlement Agreement attached to this order as *Exhibit 1*.

18 2. Class counsel mailed, by United States first-class mail, 27 court-  
19 approved notices to class members on August 9, 2010. Election forms and a copy of the  
20 Settlement Agreement were included in this mailing.

21 3. All class members responded to the election form either by  
22 returning the form to class counsel, or by speaking to class counsel.

23 4. Class members were informed of the methods to object or  
24 comment on the proposed Settlement Agreement.

25 5. No class member objected to the proposed Settlement Agreement.  
26 One class member sent an email in support of the proposed Settlement Agreement, and

ORDER (1) APPROVING SETTLEMENT AGREEMENT;  
(2) AWARDING FEES AND COSTS; AND (3) APPROVING  
INCENTIVE AWARD – 2

[Case No. C09-0449 RSM]

SIRIANNI YOUTZ  
MEIER & SPOONEMORE  
719 SECOND AVENUE, SUITE 1100  
SEATTLE, WASHINGTON 98104  
TEL. (206) 223-0303 FAX (206) 223-0246

1 several other class members orally indicated support in telephone calls to class counsel.

## 2 II. CONCLUSIONS

3 1. Rule 23(e) provides that “a class action shall not be dismissed or  
4 compromised without the approval of the court ....” Compromise and arbitration of  
5 complex litigation is encouraged and favored by public policy. *See Simula, Inc. v.*  
6 *Autoliv, Inc.*, 175 F.3d 716, 719 (9<sup>th</sup> Cir. 1999).

7 2. A presumption of fairness and adequacy attaches to a class action  
8 settlement reached in arm’s-length negotiations by experienced class counsel after  
9 meaningful discovery. *See e.g., Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn. 2d  
10 178, 209, 35 P.3d 351 (2001).

11 3. The Court has considered the following factors: the strength of the  
12 plaintiffs’ case; the risk, expense, complexity, and likely duration of further litigation;  
13 the risk of maintaining class action status through trial; the amount offered in the  
14 settlement; the stage of the proceedings; the extent of discovery; the recommendation  
15 of class counsel; and the lack of objections from class members. Based upon these  
16 factors, the Court finds that the proposed Settlement Agreement is fair, reasonable, and  
17 in the best interests of the class. Specifically, the Court concludes that the Settlement  
18 Agreement was the result of arms-length bargaining. The Settlement Agreement  
19 provides the class members with substantial relief, even after the payment of attorneys’  
20 fees, costs and incentive awards. The Court concludes that the Settlement Agreement  
21 is reasonable, fair, and in the best interests of the class.

22 4. Class members were provided with adequate notice, and were  
23 provided with an opportunity to be heard.



1 DATED this 4 day of October 2010.

2  
3  
4 

5 RICARDO S. MARTINEZ  
6 UNITED STATES DISTRICT JUDGE  
7

8 Presented by:  
9 SIRIANNI YOUTZ  
10 MEIER & SPOONEMORE

11 BY: /s/ Richard E. Spoonemore  
12 Richard E. Spoonemore (WSBA #21833)  
13 719 Second Avenue, Suite 1100  
14 Seattle, WA 98104  
15 Tel. (206) 223-0303; Fax (206) 223-0246

16 — AND —

17 EKMAN, BOHRER & THULIN, P.S.

18 BY: /s/ Charles H. Thulin  
19 Charles H. Thulin (WSBA #9039)  
20 220 W. Mercer Street, Suite 400  
21 Seattle, WA 98119  
22 Tel. (206) 282-8221; Fax (206) 285-4587

23 COUNSEL FOR PLAINTIFF AND THE CLASS

24 SONG MONDRESS, PLLC

25 BY: /s/ Michael P. Monaco  
26 Michael P. Monaco (WSBA # 24460)  
720 Third Avenue, Suite 1500  
Seattle, WA 98104  
Phone: (206) 398-1500, Fax: (206) 398-1501

COUNSEL FOR DEFENDANTS

ORDER (1) APPROVING SETTLEMENT AGREEMENT;  
(2) AWARDING FEES AND COSTS; AND (3) APPROVING  
INCENTIVE AWARD – 5

[Case No. C09-0449 RSM]

SIRIANNI YOUTZ  
MEIER & SPOONEMORE  
719 SECOND AVENUE, SUITE 1100  
SEATTLE, WASHINGTON 98104  
TEL. (206) 223-0303 FAX (206) 223-0246